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5-1.100

General Policy and Responsibilities

The Environment and Natural Resources Division, which was created in 1909, represents the United States, its agencies and officials in matters relating to environmental quality, public lands and natural resources, Indian lands and native claims, and wildlife and fishery resources. The Division's responsibilities are varied and include both enforcement and defensive work, in both criminal and civil cases. More specifically, responsibilities of the Environment and Natural Resources Division are set forth in 28 C.F.R. § 0.65.

5-1.200 Litigation Involving the Environmental Protection Agency

With respect to any matter assigned to the Environment and Natural Resources Division in which the Environmental Protection Agency is a party, the Assistant Attorney General in charge of the Environment and Natural Resources Division, and such staff as he/she may specifically designate in writing, are authorized to exercise the functions and responsibilities undertaken by the Attorney General in the Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency (42 Fed.Reg. 48942), except that Subpart Y of 28 C.F.R. Part 0 shall continue to govern as authority to compromise and close civil claims in such matters.

5-1.300 Supervision and Handling of Environment and Natural Resources Division Cases -- Generally

All cases within the area of responsibility of the Environment and Natural Resources Division are subject to the supervision and control of the Assistant Attorney General in charge of the Environment and Natural Resources Division. As is hereinafter more fully set forth, the responsibilities for direct handling of cases are divided into four general classifications: (1) cases for which authority has been delegated to the United States Attorneys which may be directly referred to him/her by an authorized field officer or a federal department or agency, *see* USAM 5-1.310; (2) cases which are delegated to the United States Attorneys by the Assistant Attorney General of the Division for which the United States Attorneys are assigned primary responsibility, *see* USAM 5-1.323; (3) cases which the Assistant Attorney General of the Division determines shall be the joint responsibility of the Division and the United States Attorney, *see* USAM 5-1.324; and (4) cases for which the Division retains primary responsibility, *see* USAM 5-1.325.

5-1.302 Pleadings To Be Signed by the Assistant Attorney General

In all civil cases where the United States is a plaintiff, other than direct referral cases, *see* USAM 5-1.310 and specific cases or classes of cases the Assistant Attorney General exempts from this requirement, arising from matters in the litigating sections, all complaints, or agreements for entry of judgment or dismissal shall be signed, prior to filing, by the Assistant Attorney General, unless otherwise expressly delegated.

5-1.310 Authority of United States Attorneys to Initiate Actions Without Prior Authorization, i.e., Direct Referral Cases

Actions which may be initiated by the United States Attorneys without prior authorization from the Environment and Natural Resources Division are listed in Environment and Natural Resources Division Directive No. 8-80, amending Division Directive No. 7-76 (41 Fed.Reg. 53660) as amended, and Directive No. 16-92, of April 8, 1992. The pertinent portion of the amended Directive provides generally as follows:

Section I-AUTHORITY TO INITIATE CASES

A. *Delegation to United States Attorneys*

1. *Land Cases.* United States Attorneys are authorized to act in matters concerning real property of the United States, including tribal and restricted individual Indian land, not involving new or unusual questions or questions of water rights, on behalf of any other department or agency in response to a direct request in writing from an authorized field officer of the department or agency concerned, without prior authorization from the Environment and Natural Resources Division, in the following described cases:
 - a. Actions to recover possession of, or quiet title to, property from tenants, squatters, trespassers or others, and actions to enjoin trespasses on federal property;
 - b. Actions to recover damages resulting from trespasses when the amount of the claim for actual damage bases upon an innocent trespass does not exceed \$200,000 (the United States Attorneys may seek recovery of amounts exceeding \$200,000 (i) if the actual damages are \$200,000 or less and state statutes permit the recovery of multiple damages, e.g., double or treble, for either a willful or an innocent trespass; or (ii) if the actual damages are \$200,000 or less, but the action is for conversion to obtain recovery of the enhanced value of property severed and removed in the trespass;
 - c. Actions to collect delinquent rentals or damages for use and occupancy of not more than \$200,000;
 - d. Actions to collect costs of forest fire suppression and other damages resulting from such fires;

- e. Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects and federal reclamation projects of not more than \$200,000;
- f. Actions to collect loans of money or livestock made by the United States to individual Indians without limitation on amount, including loans made by Indian tribal organizations to individual Indians if the loan agreements, notes and securities have been assigned by the tribal organizations to the United States;
- g. Actions to recover damages resulting from breach of a timber sale contract when the amount of the claim does not exceed \$200,000; and
- h. Actions in which the United States is named as a party pursuant to 28 U.S.C. § 2410.

2. *Environmental Cases.* Pursuant to Paragraph 10 of the Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency (42 Fed.Reg. 48942) with respect to the handling of litigation to which the Environmental Protection Agency is a party, all requests of the Environmental Protection Agency for litigation must be submitted by the Agency through its General Counsel or its Assistant Administrator for Enforcement to the Assistant Attorney General, except that matters requiring an immediate temporary restraining order may be submitted by Regional Administrators of the Environmental Protection Agency simultaneously to a United States Attorney and the Assistant Attorney General. Consequently, except for matters requiring an immediate temporary restraining order, or as provided in Chapter 11 of this Title, United States Attorneys are not authorized to accept on a direct reference basis any matters or cases originating in any office of the Environmental Protection Agency.

United States Attorneys are authorized to act without prior authorization from the Environment and Natural Resources Division, on behalf of federal departments or agencies other than the Environmental Protection Agency, in response to a direct request in writing from an authorized field officer of the department or agency concerned (a copy of said request is to be forwarded forthwith to the Assistant Attorney General, Environment and Natural Resources Division by the United States Attorney) as provided in Chapter 11 of this Title and in the following environmental cases:

- a. Civil or criminal actions involving the filling or the deposit of dredged or fill material upon, or the alteration of the channels of, the waters of the United States, in violation of Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. § 403), or of Section 404 of the Federal Water Pollution Act Amendments of 1972 (33 U.S.C. § 1344) or of both statutes;
- b. Civil or criminal actions involving the discharge of refuse into the navigable waters of the United States, and, in certain cases, their tributaries, in violation of Section 13 of the Act of March 3, 1899 (33 U.S.C. § 407), except for
 - (i) *in rem* actions against vessels, which actions shall continue to be handled in the manner set forth in Departmental Memorandums 374 and 376, dated June 3, 1964, and shall continue to be under the jurisdiction of the Civil Division; and
 - (ii) criminal actions involving the discharge either of oil or of hazardous substances, for which discharge a government agency either has imposed a civil penalty pursuant to Section 311(b)(6) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. § 1321(b)(6)), or has under consideration the imposition of such a penalty.

3. *Wildlife and Marine Resources Cases.* United States Attorneys are authorized to act, without prior authorization from the Environment and Natural Resources Division, on behalf of any other department or agency in response to a direct request in writing from an authorized field officer of the department or agency concerned, in the following wildlife cases:

- a. Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*;
- b. Lacey Act Amendments of 1981, 16 U.S.C. § 3371 *et seq.*, 18 U.S.C. § 42;

- c. Airborne Hunting Act, 16 U.S.C. § 742j-1;
- d. Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*;
- e. Migratory Bird Conservation Act, 16 U.S.C. §§ 715 to 715d, 715e, 715f to 715k, 715l to 715r; f. Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 to 668d;
- g. Dingell-Johnson Fish Restoration Act, 16 U.S.C. §§ 777 to 777i, 777k;
- h. National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd, 668ee;
- i. Marine Protection, Research and Sanctuaries Act, 33 U.S.C. § 1431 *et seq.*;
- j. Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*;
- k. Whaling Convention Act, 16 U.S.C. § 981 *et seq.*;
- l. Atlantic Tunas Convention Act, 16 U.S.C. § 971;
- m. Tuna Convention Act, 16 U.S.C. § 951 *et seq.*;
- n. Marine Mammal Protection Act, 16 U.S.C. § 1361 *et seq.*;
- o. Sockeye Salmon or Pink Salmon Fishing Act, 16 U.S.C. § 776 *et seq.* [repealed];
- p. Fur Seal Act of 1966, 16 U.S.C. § 1151 *et seq.*;
- q. Protection of Sea Otters on the High Seas Act, 16 U.S.C. § 1171 *et seq.*;
- r. Wild Free Roaming Horses and Burros Act, 16 U.S.C. §§ 1331 to 1340;
- s. Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 to 667e;
- t. Animal Damage Control Act, 7 U.S.C. § 426 *et seq.*;
- u. Sponge Act, 16 U.S.C. § 781 *et seq.*;
- v. Northern Pacific Halibut Act, 16 U.S.C. § 773 *et seq.*;
- w. North Pacific Fisheries Act, 16 U.S.C. § 1021 *et seq.* [repealed];

Upon receipt of referrals of any law enforcement action under the above statutes, notice shall be given to the Wildlife and Marine Resources Section before filing or declining to file an action, as set forth in USAM 5-10.312.

United States Attorneys are not authorized to commence actions against foreign vessels or foreign fishermen under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*, without prior telephonic approval from the Section. The views of the United States Attorney for a district to which a foreign vessel may be brought will be ascertained in advance of seizure by the Coast Guard. The United States Attorney should then contact the Section to discuss the complaint to be filed, release bond and inventory arrangements.

5-1.320 Actions Not Subject to Direct Referral to United States Attorneys

Sections 5-1.321 through 5-1.326 discuss the actions not subject to direct referral to United States Attorneys.

5-1.321 Prior Authorization Needed to Initiate Action

Actions which may not be initiated by the United States Attorneys without prior authorization from the Division are listed in USAM 5-2.000.

5-1.322 Assignment of Actions Generally

All cases which are not subject to direct referral to the United States Attorneys as set forth in USAM 5-1.310 are initially referred to the Assistant Attorney General for review. Such review is assigned to the appropriate Section of the Division which then initially determines whether the case should more appropriately be: (1) assigned to the United States Attorney, *see* USAM 5-1.323, (2) designated as a case to be handled as the joint responsibility of the United States Attorney and the Division, *see* USAM 5-1.324, or (3) retained by the Division for its direct handling. *See* USAM 5-1.325. The costs of litigation and the proximity of the United States Attorney to the court result in a large percentage of cases being assigned to the United States Attorneys. However, the nature of the issue of law involved, the relative national or financial importance of the case, the precedential possibilities of the litigation, and the need for the Division to retain a cadre of staff attorneys trained in the trial of cases, are considerations in making case assignments.

5-1.323 Cases Assigned to United States Attorneys

Assignment of case responsibility to the United States Attorney is always with the understanding that the Assistant Attorney General of the Division has supervisory responsibility on behalf of the Attorney General over all litigation under the jurisdiction of the Division. Where possible, the Division will promulgate categories of cases which will be assigned to the United States Attorneys; these assignments may distinguish between United States Attorneys on the basis of their experience and expertise with respect to such cases. If an assignment of any such case is made pursuant to USAM 5-1.3240 or 5-1.325, the notice of assignment to the United States Attorney will note the exception.

The United States Attorney shall be primarily responsible for all cases assigned to him/her. If he/she feels that he/she cannot accept responsibility by reason of a conflict of interest, the lack of personnel or expertise in his/her office, or other good reasons, he/she should immediately consult with the Chief of the appropriate Section to determine if some other assignment of responsibility can be made.

Regular communication should be maintained with the appropriate Section of the Division regarding the conduct of litigation assigned to the United States Attorneys, especially if any problems arise in connection with a case. The Division is organized so as to maintain considerable expertise in the particular subject matter areas under the jurisdiction of the Division and is, therefore, in a position to provide valuable assistance to the United States Attorney, including assistance in preparing pleadings and briefs as well as providing general advice on the substantive law and the handling of litigation. A copy of the final order entered in any case must be transmitted promptly to the appropriate Section of the Division.

5-1.324 Cases Assigned as a Joint Responsibility

If the appropriate Section of the Division feels that a given case should be handled as a joint responsibility of the United States Attorney and the Division, the Chief of the Section shall make the assignment initially with a written description of the expected division of work and responsibility for the case. In the event the United States Attorney involved is not satisfied with the assignment, he/she shall consult with the appropriate Section Chief to resolve the assignment and/or division of responsibility. Any remaining differences will be resolved by the Assistant Attorney General of the Division. At least three months before trial, a firm understanding will be reached between the Division and the United States Attorney on trial responsibility. Either the Division or the United States Attorney may request a change in the assignment at any time. The Division will periodically review all joint responsibility assignments with the objective that where Division assistance is no longer required the case may be assigned to the United States Attorney under USAM 5-1.323.

5-1.325 Cases for Which the Division Is Assigned Responsibility

If the appropriate Section of the Division feels that a given case should be handled by staff attorneys in the Division, the Chief of the Section will notify the United States Attorney, and the Chief of the Section and the United States Attorney will then agree upon exactly what, if any, support services the United States Attorney will provide to assist the staff attorneys in handling the litigation. Again, any differences over such case assignments and the provision of support services will be resolved by the Assistant Attorney General in charge of the Division.

5-1.326 Review and Change of Case Assignments

The assignment of case responsibility to the United States Attorney may be reviewed at any subsequent time at the request of the United States Attorney, the client agency, or the appropriate Section, and may be changed; a change of assignment will only be made, however, after consultation with the United States Attorney. As with all differences between a Section of the Division and the United States Attorney, any differences concerning assignment or handling of cases will be resolved by the Assistant Attorney General of the Division.